

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Regarding
Broadband Infrastructure Deployment and to
Support Service Providers in the State of
California.

R.20-09-001
(Filed September 10, 2020)

**OPEN-ACCESS MIDDLE-MILE REPLY COMMENTS OF THE UTILITY
CONSUMERS' ACTION NETWORK (UCAN)**



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**OPEN-ACCESS MIDDLE-MILE INITIAL COMMENTS OF THE UTILITY
CONSUMERS' ACTION NETWORK (UCAN)**

I. INTRODUCTION

In response to the schedule set forth by the Administrative Law Judge (“ALJ”),¹ the Utility Consumers’ Action Network (“UCAN”) respectfully submits these reply comments regarding criteria for determining appropriate locations for California’s open-access middle-mile network.²

UCAN supports fully the Commission’s laudable endeavor to ensure that public monies are spent prudently, based on a fully informed assessment of California’s broadband infrastructure. Open-access middle mile networks, situated in carefully considered locations, will encourage competitive entry and assist the state in achieving ubiquitous, reliable broadband service for all Californians. SB 156, among other things, requires the Commission to “[i]dentify areas with no known middle-mile infrastructure that is open access, with sufficient capacity, and at affordable rates” and also to “[i]dentify priority statewide open-access middle-mile broadband network locations.”³ UCAN recognizes that Senate Bill 156 requires the CPUC to solicit and receive public comments to inform Staff’s report, and is hopeful that comments submitted in this phase of this proceeding will assist Staff in preparing its report.

¹ In a ruling dated August 20, 2021, Administrative Law Judge Glegola extended the deadlines for initial and reply comments to September 3, 2021 and September 21, 2021, respectively.

² As is explained in the *August 6th Ruling* (page 4):

“Middle Mile” refers to the high-capacity fiber-optic cables that traverse long distances (*e.g.*, 10s-100s of miles) to connect communities to the Internet backbone. These high-capacity lines are analogous to transmission lines for electric utilities, or aqueducts and rivers for water utilities. This is in contrast to the “Last Mile,” which refers to the wires or cables that connect a house to the nearest utility pole and connect a community to the middle mile. “Open-Access” refers to a network model that allows any entity to access and utilize the infrastructure at a fair market rate and in a non-discriminatory manner.

³ *August 6th Ruling*, at pp. 2-3.

II. REPLY COMMENTS TO ISSUES RAISED IN PARTIES' OPENING COMMENTS

- a. UCAN supports various Parties who find there is still a need for more, better and precise information to help evaluate the questions in this proceeding.

UCAN, like many other Parties, did observe that much more information and data, perhaps most of it, is not in front of the proceeding and parties in a sufficient degree to allow for robust reflections, comments and analysis. For example, SDG&E offered its opinion that more information by the relevant stakeholders is necessary to determine whether any SDG&E facilities are in a location that would assist in connecting to a last mile provider that could serve a currently unserved or underserved area.⁴ In this broad sense, UCAN concurs.

And, more specifically, UCAN agrees with CforAT in their similar conclusion that many of the questions asked in the Assigned Commissioner's Ruling appear to be directed to broadband providers or other parties with access to substantially more information and/or technical expertise than is available to other Parties.⁵ Without more sufficient data, Parties express hesitancy and exasperation in trying to draw definitive conclusion about the accurate conditions surrounding middle-mile access and investment. UCAN believes this proceeding will substantially benefit with much more information added to the record.

- b. UCAN concurs with Parties that considerations of access and affordability can only be adequately addressed with better data.

UCAN is in alignment with Public Advocates in their belief that the Commission and CDT must consider broadband availability and affordability when developing solutions to address the digital divide in California.⁶ As Public Advocates noted, while the Commission's own data suggests that the vast majority of Californians who lack broadband connections actually have broadband service available in their communities, customers do not subscribe to it because of affordability and other issues. UCAN agrees with Public Advocates suggestion, because high prices pose a significant barrier for many households in California seeking to subscribe to broadband service, that the Commission should ensure that last mile service is offered at affordable rates to customers.⁷

⁴ SDG&E Opening Comments, at p. 2.

⁵ CforAT Opening Comments, at p. 1.

⁶ Public Advocates Opening Comments, at p. 8.

⁷ Id., at pp. 9-10.

Like UCAN opined regarding data and knowledge about San Diego territories, CforAT also observed that given those counties' geographic location and extremely high percentages of unconnected households, it is likely that providers have not made adequate (or any) meaningful investment in middle-mile infrastructure to serve these communities. The providers are, of course, welcome to disprove these assumptions. However, unless and until the providers do so, it is fair to assume that counties with a disproportionately high number of unserved households are areas with insufficient middle-mile network access due to lack of capacity and/or lack of affordability.⁸

- c. UCAN agrees that historical redlining maps and data are helpful in evaluating whether communities are underserved.

UCAN concurs with CforAT that given the evidence in the record linking historical redlining and digital redlining, and the nearly identical maps of historical redlining and Greenlining's heat maps of the digital divide, historical redlining maps are reasonable identifier of underserved areas in areas with patchwork access to high-speed broadband.⁹

- d. UCAN appreciates efforts by several Parties to describe and suggest structured approaches to assessing the questions remaining in this proceeding.

UCAN does take note of CCTA's efforts to sketch out and emphasis a defined process of review. And while not fully agreeing just yet, UCAN does appreciate the suggestion that, to identify potential locations for the middle-mile network that will enable last-mile connection of unserved households in areas lacking middle-mile infrastructure, an explicit 4-step evaluation process be followed. The statute effectively establishes four steps the Commission must take to prioritize the universe of potential Middle-Mile Network locations consistent with the "worst first" strategy to ensure that the \$3.25 billion is targeted to bring broadband first to the hardest to reach unserved California households.¹⁰ And, somewhat similarly, Cox in its Opening Comments also laid out and suggested a structured method to review the issues as well as corresponding data and information. Cox's recommendation, citing to both the statutory requirements and the Legislature's intent provided for the Commission is to take steps that prioritize first those communities that are not served by a provider offering at least 25 Mbps downstream and 3 Mbps upstream (25/3 unserved standard). To that end, in alignment with the

⁸ CforAT Opening Comments, at p. 2.

⁹ Id., at p. 4.

¹⁰ CCTA Opening Comments, at p. 4.

statutory guidance, Cox recommends that the Commission adopt a sequence of analysis for identifying locations for the middle-mile network as it lays out in its comments.¹¹

Here, again, while UCAN does not necessarily support the specific processes or steps as cited by those parties, it does believe it is worthwhile to highlight that several Parties do find it vitally important to latch onto some defined, explicit steps to inform the decision-making process in this matter. A structured, well-defined, process, UCAN admits, would serve well this proceeding particularly as many other Parties have expressed their concern over lack of sufficient data.

e. UCAN concurs that Middle-Mile capacity concerns must be more fully vetted.

UCAN fully supports TURN's suggestion that the Commission should only determine that existing middle-mile infrastructure has sufficient capacity when the route can meet the current needs of the communities—regardless of whether communities are currently interconnected—along its path. TURN suggests the criteria of sufficient capacity should not be deemed to be satisfied unless the infrastructure is “future proof,” including the ability to accommodate future interconnection and flexibility to adapt to new services that may not even be available today.¹²

Furthermore, UCAN is in complete agreement that Staff should be required to determine the extent to which existing middle-mile infrastructure has a history of service quality problems that have prevented entities such as competitive local exchange carriers, Internet service providers (ISPs), wireless Internet service providers (WISPs) or government agencies from obtaining middle-mile connections. As TURN notes, Such problems should inform the Commission's analysis of whether those facilities provide “sufficient capacity” to be included in the state's middle mile network.¹³

f. UCAN supports a number of “priorities” suggested by various Parties.

UCAN supports the priorities highlighted by TURN. One, the Commission should seek cost and rate data from middle mile providers to determine whether the Commission should give priority status to high-cost areas. Moreover, the Commission should favor projects that entail new builds, the communities without any middle mile facilities, or those that lack truly open

¹¹ Cox Opening Comments, at pp. 2-3.

¹² TURN Opening Comments, at p. 3.

¹³ Id.

access middle mile at affordable rates.¹⁴ Two, the Commission should also consider the expediency at which the middle mile may be built and available to communities. Areas where it is difficult to build middle mile are the least likely to be served by commercial middle mile providers. And, therefore, this lack of commercial middle mile facilities in these areas should be a factor when prioritizing projects.¹⁵

UCAN also supports a couple of goals espoused by Public Advocates. One, prioritize building sections of the middle mile network that are near Environmental and Social Justice (ESJ) communities, Tribal communities, and Tier 2 and 3 High Fire Threat District (HFTD) areas that are unserved or underserved⁴ by middle mile.¹⁶ And, two, recommend to CDT that all last mile service providers that connect to the middle mile network, including communications service providers, local governments, and tribal governments, offer a low-income broadband plan. Collect input from community organizations across the state through comprehensive community engagement methods about where middle mile infrastructure is most needed.¹⁷

UCAN also echoes TURN's focus that the capability to interconnect is crucial for the state network to achieve its goals. TURN urges the state entities that are designing and building this network look at interconnection issues in three ways. First, it must design the network to facilitate interconnection with a variety of stakeholders and using different types of interconnection arrangements including "colocation hotels," and other types of meet points. Second, the Commission must use its authority to ensure that all network providers, including incumbent carriers, competitive carriers, investor-owned utilities, and entities serving rural and underserved populations meet their legal obligations to interconnect on equitable and reasonable terms and conditions. Third, this Commission, and other state entities, should continue work to map and document existing telecommunications networks throughout the state, including investor-owned utility fiber networks, and existing interconnection meet points.¹⁸

¹⁴ Id., at p. 8.

¹⁵ Id., at p. 9.

¹⁶ Public Advocates Opening Comments, at p. 1.

¹⁷ Id., at p. 2.

¹⁸ TURN Opening Comments, at pp. 14-15.

- g. UCAN, on the other hand, does not support an over-emphasis or over-reliance on IRUs.

In its Opening Comments, Cox opines, in order to fulfill SB 156, the BDL Office, which is charged with planning and developing a middle-mile network, will need to address whether the state should purchase IRUs or other from an existing provider. Per Cox, if there is existing infrastructure that can meet the needs of the middle-mile network that the BDL Office is charged with developing, then the BDL Office, in collaboration with the third-party administrator contemplated in SB 156, can explore the option of purchasing IRUs with existing service providers. Ultimately, it is the responsibility of the BDL Office to explore such options as it endeavors to design and deploy the statewide middle-mile network, using the Commission's recommendations to determine build locations.¹⁹

UCAN does not agree. Rather, UCAN finds more persuasive TURN's reasoning as expressed in its comments. Instead of expending resources on long-term IRUs to add capacity to the state middle mile core network, the funding and staff resources that would be required to secure leases should be used to carry out the work necessary to accomplish the task of overseeing the design, construction and operation of the state network. The state should not enter into an agreement for an IRU to use as main routes or primary components of its middle mile network.

²⁰

III. Conclusion

UCAN respectfully submits these initial comments regarding California's open-access middle-mile infrastructure.

Respectfully submitted,
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¹⁹ Cox Opening Comments, at pp. 6-7.

²⁰ TURN Opening Comments, at pp. 11-12.